

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MICHAEL HOWARD HUNTER,
Plaintiff,

v.

HAL WILSON, et al.,
Defendant.

No. CV-08-181-FVS
ORDER

MICHAEL H. HUNTER moves the Court to vacate its order dismissing his complaint without prejudice. Mr. Hunter is representing himself.

BACKGROUND

On June 4, 2008, Michael H. Hunter lodged a complaint with the District Court Executive. Fifteen days later, he moved to dismiss his complaint without prejudice. The Court granted his motion on June 23rd. On December 12th, he moved the Court to vacate its order of dismissal.

RULING

"[A] suit dismissed without prejudice is treated for statute of limitations purposes as if it had never been filed." *Elmore v. Henderson*, 227 F.3d 1009, 1011 (7th Cir.2000). Unlike a complaint that is dismissed with prejudice, a complaint that is dismissed without prejudice can be refiled. *Id.* Mr. Hunter may refile his complaint as a new lawsuit if he chooses. However, the Court declines

1 to vacate its order of dismissal. Doing so would enable Mr. Hunter to
2 avoid the statute of limitations. That would be inappropriate under
3 the circumstances.

4 **IT IS HEREBY ORDERED:**

5 1. Mr. Hunter's motion to vacate **(Ct. Rec. 11) is denied.**

6 2. Mr. Hunter's request for a hearing **(Ct. Rec. 12) is denied.**

7 **IT IS SO ORDERED.** The District Court Executive is hereby
8 directed to enter this order and furnish a copy to Mr. Hunter.

9 **DATED** this 18th day of December, 2008.

10 s/ Fred Van Sickle
11 Fred Van Sickle
12 Senior United States District Judge
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